

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
JAMES STEPHEN DEL SORDO**

VSB Docket No. 20-053-116380

MEMORANDUM ORDER

THIS MATTER came to be heard on January 22, 2021, on the Subcommittee Determination for Certification by the Fifth District, Section III Subcommittee of the Virginia State Bar, before a panel of the Virginia State Bar Disciplinary Board (“Board”) consisting of Thomas R. Scott, Jr., 2nd Vice Chair; Sandra L. Havrilak; Sandra M. Rohrstaff; Michael J. Sobey; and Reba H. Davis, Lay Member. The Virginia State Bar (the “VSB”) was represented by Senior Assistant Bar Counsel Elizabeth K. Schoenfeld (“Senior Assistant Bar Counsel”). The Respondent James Stephen Del Sordo (hereinafter “the Respondent”) was present and was represented by Timothy J. Battle. Jennifer L. Hairfield, court reporter, Chandler and Halasz, Inc., P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

At the onset of the hearing, the Chair stated the following: On March 12, 2020, the Governor of Virginia declared a state of emergency regarding the novel coronavirus (COVID-19) pursuant to Executive Order 51. The state of emergency has been in place since March 12, 2020 and continues indefinitely, until revised or lifted by the Governor. Therefore, because COVID-19 has rendered it unsafe for public bodies to assemble in person, the Virginia State Bar Disciplinary Board is meeting via teleconference, with access provided to the public to observe. In addition, the meeting will be recorded, will be available for viewing on the Virginia State Bar’s website, and it will otherwise comply with Virginia’s Freedom of Information Act

regarding electronic meetings, found in the Virginia Code, Section 2.2-3708.2, as supplemented by Section 4-0.01.g of Virginia House Bill 29, Chapter 1283 (2020).

At the outset of the hearing, the Chair polled the members of the panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

All legal notices of the date and place were timely sent by the Clerk of the Disciplinary System (“Clerk”) in the manner prescribed by Part Six, Section IV, Paragraph 13-18 of the Rules of the Supreme Court of Virginia.

VSB Exhibits 1-52, 54-68, and 70-89 were admitted into evidence by the Chair, without objection from the Respondent. All of the factual findings made by the Board were found to have been proven by clear and convincing evidence.

THE BOARD’S FINDINGS

The Respondent was licensed to practice law in Virginia and the District of Columbia prior to the events detailed herein. The Respondent was admitted to the Virginia Bar on April 30, 1992.¹ On April 26, 2019, the Board issued a Summary Order suspending Respondent’s license to practice law for one year and one day.² Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-29, the Summary Order stated:

Respondent must comply with the requirements of Part Six § IV, ¶ 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the suspension or revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client. Respondent shall give such notice within 14 days of the effective date of the

¹ VSB Ex. 4.

² VSB Ex. 5.

sanction, and make such arrangements as are required herein within 45 days of the effective date of the suspension or revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the suspension or revocation that such notices have been timely given and such arrangements made for the disposition of matters.³

The Board issued a Memorandum Order of Suspension reiterating these obligations on May 7, 2019.⁴ Thus, from April 26, 2019 forward, Respondent was not licensed to practice law in the Commonwealth of Virginia. On June 24, 2019, Respondent executed an Affidavit certifying:

I have notified all clients for whom I was handling matters in the Commonwealth of Virginia, all opposing counsel and presiding judges in pending litigation that my license to practice law has been suspended/revoked.⁵

The Affidavit executed by the Respondent stated that he notified all clients for whom he was handling matters “in the Commonwealth of Virginia;” however, the Board’s Summary Order provides no such limitation.⁶ Respondent was required to notify all of his clients, in any jurisdiction, not just the Commonwealth of Virginia. Respondent filed his non-compliant Affidavit with the Clerk of the VSB (hereinafter “Clerk”), and attached a letter sent to one client, OpenText Public Sector Solutions, Inc. (hereinafter “OpenText”), as notice of his suspension in the case *OpenText Public Sector Solutions, Inc. v. CGI Federal, Inc.*, Case No. 2018-16956.⁷ That notice was also sent to the Chief Judge of the Fairfax County Circuit Court, Respondent’s opposing counsel, and the Clerk.⁸ Respondent provided no proof of notification to any other clients, opposing counsel, or tribunals. The Respondent testified that he helped secure new counsel for OpenText by contacting Raighne C. Delaney, Esq., who credibly testified that his law firm assumed the representation of OpenText. While the Board found Mr. Delaney’s

³ VSB Ex. 5.

⁴ VSB Ex. 6.

⁵ VSB Ex. 7.

⁶ Compare VSB Exhibit 7 with VSB Exhibit 5.

testimony credible, the Respondent's conduct with respect to OpenText was not charged in the Certification.

Following Respondent's Virginia suspension, the only jurisdiction in which Respondent was licensed to practice law was the District of Columbia.⁹ On June 17, 2019, after receiving the Board's Memorandum Order of Suspension, the D.C. Court of Appeals entered an Order that suspended the Respondent's D.C. license.¹⁰ In its Order, the Court of Appeals further ordered the Respondent to show cause why he should not be suspended for a year and a day, and ordered that he remain suspended pending final disposition of the D.C. proceeding.¹¹ Following his D.C. suspension, the Respondent was required, pursuant to D.C. Bar Rule XI, § 14(a), to:

promptly notify by registered or certified mail, return receipt requested, all clients on retainer and all clients being represented in pending matters other than litigated or administrative matters or proceedings pending in any court or agency, of the order of disbarment or suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order, and shall advise such clients to seek legal advice elsewhere.

Similarly, D.C. Bar Rule XI, § 14(b) required Respondent to give notice to:

all clients involved in litigated matters or administrative proceedings in any court of the District of Columbia, or in pending matters before any District of Columbia government agency, of the order of disbarment suspension and of the attorney's consequent inability to act as an attorney after the effective date of the order.

Respondent was required to file an affidavit demonstrating that he complied with these provisions within ten (10) days of the effective date of suspension.¹² On July 23, 2019, thirty-six days after his D.C. suspension was effective, the Respondent filed an Affidavit of Compliance with DC Bar Rule XI, § 14.¹³ The Respondent represented in his Affidavit that he did not have

⁷ VSB Ex. 7.

⁸ *Id.*

⁹ See VSB Ex. 1, 2.

¹⁰ VSB Ex. 8.

¹¹ *Id.*

¹² *Id.*

¹³ VSB Ex. 9.

any clients to whom he was required to provide notice.¹⁴ As of June 17, 2019, Respondent was not licensed to practice in any state or in D.C.¹⁵

Respondent's Conduct before the Civilian Board of Contract Appeals ("CBCA")

The United States Civilian Board of Contract Appeals ("CBCA") is a tribunal that resolves contract disputes between government contractors and certain federal agencies.¹⁶ The CBCA is located in Washington, D.C.¹⁷ The *Rules of Procedure of the Civilian Board of Contract Appeals* provide that

An appellant, petitioner, or applicant may appear before the Board through an attorney. An individual appellant, petitioner, or applicant may appear for himself or herself. A corporation, trust, or association may appear by one of its officers. A limited liability corporation, partnership, or joint venture may appear by one of its members. Each individual appearing on behalf of an appellant, petitioner, or applicant must have legal authority to appear.¹⁸

Respondent represented NVS Technologies, Inc. (hereinafter "NVS") before the CBCA.¹⁹ The Complainant in this case is Marion Cordova, the Senior Attorney for the Department of Homeland Security and opposing counsel in the NVS matter. Mr. Cordova credibly testified to all of his interactions with the Respondent in this litigation. Mr. Cordova was a government attorney, who worked for various agencies. At different times, he was called in to assist with the NVS matter, and during those times the Respondent was counsel for NVS. The NVS case is still pending in the Court of Appeals for the Federal Circuit; and, if NVS recovered their claim, Respondent's firm, of which the Respondent is the sole partner, stood to gain approximately \$99,750,000.

¹⁴ *Id.*

¹⁵ *See* VSB Ex. 1, 2.

¹⁶ VSB Ex. 12.

¹⁷ *Id.*

¹⁸ VSB Ex. 13.

¹⁹ *See* VSB Ex. 1, 2.

Mr. Cordova testified that in one instance, the Respondent agreed to submit a protective order for confidential documents to the CBCA. The Respondent then failed to do so, and released documents to the public that identified at least one government agent. The Respondent asserted that he forgot to submit the agreed order to the CBCA; however, the Board did not find his testimony to be credible. The Respondent testified that he did not believe anyone was harmed by that decision, even though the government agent's private information was publicized and resulted in protests outside his home. This interaction was raised by the Respondent in an apparent attempt to cast doubt on the motivation of Mr. Cordova for filing this Complaint. However, the Board did not find that this example of Respondent's conduct harmed Mr. Cordova's credibility.

Following his Virginia and D.C. suspensions, Respondent continued to represent NVS, sending emails as "James S. DelSordo, Esq." with attorney-client privilege notices in the email footer.²⁰ On July 29, 2019, the CBCA issued an Order stating that the Respondent was counsel for NVS.²¹ On August 8, 2019, Mr. Cordova emailed Respondent about a CBCA Decision issued in the case and repeatedly referred to NVS as "your client" in the email sent to the Respondent.²²

NVS appointed the Respondent as its Vice President of Corporate Affairs on August 9, 2019.²³ The Chief Operating Officer of NVS acknowledged that, in that role, the Respondent "did not perform any tasks for the company under this capacity and [NVS] did not pay him anything."²⁴ The next week, on August 14, 2019, Respondent notified NVS of his suspension in Virginia and D.C.²⁵ That notification was also sent to the Judge of the CBCA and the Office of the General Counsel of the Department of Homeland Security. The next day, August 15, 2019,

²⁰ VSB Ex. 17, 18, and 19.

²¹ VSB Ex. 20.

²² VSB Ex. 21.

²³ VSB Ex. 29.

Respondent filed Counsel's Motion to Withdraw Appearance for Appellant, signing the pleadings as "Counsel for Appellant NVS Technologies, Inc."²⁶ Nowhere in the motion did the Respondent represent that his Virginia and D.C. licenses to practice law had been suspended.²⁷ Nowhere did Respondent state he was an officer of NVS, or that he would be the officer entering an appearance on behalf of NVS in the future.²⁸ On August 16, 2019, the CBCA entered an Order granting Respondent's motion;²⁹ and, later that same day, Respondent entered an appearance in the case as "Vice President" of NVS³⁰ and filed Appellant's Response to Respondent's Withdrawal of its Motion to Dismiss and Request to Consolidate Appeals, signing the pleading again as Vice President of NVS.³¹ Respondent testified that he had discussions with two of the NVS shareholders in which he told them that he could continue to assist them with this case as an officer. The Respondent also testified that the company created this position solely for this purpose, to circumvent the consequences of the Respondent's suspension.

Also on August 16, 2019, Mr. Cordova sent an email to Judge Goodman of the CBCA notifying him of Respondent's suspension and representing that no notice had been received.³² Mr. Cordova credibly testified that at no point prior to Mr. Cordova discovering the Respondent's suspensions for himself, had the Respondent notified him of his suspensions. Although the Respondent's counsel attempted to argue that Mr. Cordova should have asked the Respondent if he was still a licensed attorney every time he interacted with him, the Board placed zero credence on this argument, as it is not supported by the *Rules* or the reality of the

²⁴ VSB Ex. 27.

²⁵ VSB Ex. 22.

²⁶ VSB Ex. 23.

²⁷ *See Id.*

²⁸ *See Id.*

²⁹ VSB Ex. 24.

³⁰ VSB Ex. 25.

³¹ VSB Ex. 30.

³² VSB Ex. 26.

practice of law. Likewise, in response to a VSB Investigator's inquiry, James Johnson, an attorney with the CBCA, confirmed that the Respondent had not timely notified the CBCA of his suspensions.³³

On August 23, 2019 the CBCA issued an Order to Show Cause requiring the Respondent to show cause why

He should not be DISQUALIFIED FROM REPRESENTING OR ASSISTING NVS Technologies, Inc. in CBCA 4775, 5360, and 6334 in any capacity, including but not limited to representative, attorney, expert, or consultant, for his failure to timely notify this Board as required by the VSB Memorandum Order of Suspension and his violations of the ethical requirement of candor to the tribunal as detailed above; and

His continued attempt to represent NVS Technologies, Inc. before this tribunal and his preparation and filing of the pleading entitled Appellant's Response to Respondent's Withdrawal of its Motion to Dismiss and Request to Consolidate UNAUTHORIZED PRACTICE OF LAW pursuant to the requirements of Virginia and the District of Columbia, in view of the fact that his license to practice law has been suspended by these jurisdictions; and

Why the pleading entitled "Appellant's Response to Respondent's Withdrawal of its Motion to Dismiss and Request to Consolidate Appeals" filed on August 16, 2019 should not be STRUCK FROM THE RECORD.³⁴

That same day, the CBCA issued an Order Staying Proceedings, until the Order to Show Cause regarding the Respondent was resolved.³⁵ On Friday August 30, 2019, Respondent filed his Response to Board's Order to Show Cause and requested leave to withdraw his appearance.³⁶ On September 12, 2019, the CBCA issued an Order granting Respondent's request to withdraw his appearance, but specifically providing that issue of Respondent's disqualification was not

³³ VSB Ex. 36, 37, and 38.

³⁴ VSB Ex. 31.

³⁵ VSB Ex. 32.

³⁶ VSB Ex. 33.

moot.³⁷ NVS filed an appearance by its Chief Operating Officer, Cheryl Cathey, PhD, on September 20, 2019.³⁸

On January 14, 2020, the CBCA issued its Decision on Order to Show Cause, finding that Respondent violated his duty of candor to the tribunal.³⁹ The CBCA found that the Respondent failed to act with candor to the tribunal by: (a) not identifying himself in his Motion to Withdraw as the individual who would later file a notice of appearance for NVS; (b) not identifying himself as an officer of NVS until after his motion was granted; (c) not identifying himself as an officer of NVS in his letter of August 14, 2019 to NVS; and (4) not transmitting a copy of his August 14, 2019 letter noticing his suspension to the CBCA.⁴⁰ The CBCA disqualified the Respondent from representing NVS in any capacity including representative, attorney, expert or consultant, and struck the response brief filed by the Respondent after his suspensions.⁴¹ The Respondent testified that he had reassumed representation of NVS following his suspension before the Court of Appeals for the Federal Circuit, where again, he stands to make approximately \$99,750,000.

The Board finds by clear and convincing evidence that the above conduct constitutes a violation of *D.C. Rules of Professional Conduct* 3.3(a)(1), 3.4(c), 5.5(a), 8.4(b), 8.4(c), and 8.4(d).

Respondent's Conduct before the Armed Services Board of Contract Appeals ("ASBCA")

The Armed Services Board of Contract Appeals (hereinafter "ASBCA") is a tribunal that decides contract disputes between government agencies such as the Department of Defense and

³⁷ VSB Ex. 34.

³⁸ VSB Ex. 35.

³⁹ VSB Ex. 39.

⁴⁰ *Id.*

⁴¹ *Id.*

government contractors.⁴² The ASBCA offices are located in Falls Church, Virginia, and most hearings take place at those offices.⁴³ The *Rules of the ASBCA* provide that

An individual appellant may represent his or her interests before the Board; a corporation may be represented by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. Anyone representing an appellant shall file a written notice of appearance with the Board.⁴⁴

At the time of his suspensions in Virginia and D.C., Respondent represented three clients before the ASBCA: GSC Construction, Inc. (hereinafter “GSC”); Tele-Consultants, Inc. (hereinafter “TCI”); and DCX-CHOL Enterprises (hereinafter “DCX-CHOL”).

GSC Construction, Inc.

Respondent represented GSC after his suspension. On July 11, 2019, the ASBCA issued its Majority Opinion by Administrative Judge Page which awarded GSC \$177,000 plus interest on one of its claims and \$340,818.43 plus interest on another claim.⁴⁵ On various occasions in July, August, and September of 2019, Respondent emailed Ron Goodeyon, Deputy District Counsel for the U.S. Army Corps of Engineers, regarding Respondent’s representation of GSC and the terms of the Government’s repayment of the ASBCA award.⁴⁶ Mr. Goodeyon credibly testified that at no point did the Respondent give him notice of the suspensions, and at all times Mr. Goodeyon thought the Respondent was licensed to practice law. On September 18, 2019, Respondent emailed Laura Arnett, another attorney with the U.S. Army Corps of Engineers as “James S. DelSordo, Esq.” with an attorney-client privilege warning at the end of

⁴² VSB Ex. 10.

⁴³ *Id.*

⁴⁴ VSB Ex. 11.

⁴⁵ VSB Ex. 43.

⁴⁶ VSB Ex. 43, 63-67.

his email.⁴⁷ As set forth in further detail below, the Respondent also sought Mr. Thomas's assistance with the representation of GSC.

On September 24, 2019, the ASBCA issued a Show Cause Order, ordering Respondent's client GSC to file a current certificate of good standing with the State Bar, or enter the appearance of another representative.⁴⁸ In issuing that Order, the ASBCA noted that "[i]t recently has come to the attention of the Board that Mr. DelSordo was suspended from the practice of law in both Virginia and the District of Columbia."⁴⁹ Respondent notified GSC by email of his suspensions on October 24, 2020.⁵⁰ That same day, Respondent notified his client, the Army Corp. of Engineers; the Clerk of the VSB; and the ASBCA by letter,⁵¹ and he filed a Motion to Withdraw Appearance for Appellant.⁵² Respondent testified that none of this was the practice of law and was permitted under the "Frequently Asked Questions" pamphlet produced by the VSB.

The Board finds by clear and convincing evidence that the above conduct constitutes a violation of Virginia Rules of Professional Conduct 3.4(d), 5.5(c), 8.4(b).

Tele-Consultants, Inc.

Respondent represented TCI after his suspensions. On June 20, 2019, Respondent billed TCI for "Review and comment on tolling agreement from DCMA" at a rate of \$450 per hour.⁵³ That bill was sent to TCI on July 1, 2019.⁵⁴ On June 25, 2019, Respondent exchanged emails with Kara Klass, an attorney for the Defense Contract Management Agency, accepting a

⁴⁷ VSB Ex. 54.

⁴⁸ VSB Ex. 68.

⁴⁹ *Id.*

⁵⁰ VSB Ex. 70.

⁵¹ VSB Ex.71.

⁵² VSB Ex.72.

⁵³ VSB Ex.73.

⁵⁴ *Id.*

settlement offer but not disclosing his suspension.⁵⁵ On July 11, 2019, Ms. Klass sent Respondent a draft settlement agreement.⁵⁶ On July 12, 17, and 23, 2019, Respondent exchanged emails with Ms. Klass with questions and revisions to the settlement agreement.⁵⁷ On July 24, 2019, Respondent emailed the executed settlement agreement to Ms. Klass.⁵⁸

On July 29, 2019, Respondent signed and filed a Joint Request for Dismissal, “by and through undersigned counsel” and signed as “James S. DelSordo, Esq.”⁵⁹ The ASBCA then granted Respondent’s request and entered an Order of Dismissal on August 7, 2019.⁶⁰

The Board finds by clear and convincing evidence that the above conduct, all performed after the Respondent’s suspension, constitutes a violation of *Virginia Rules of Professional Conduct* 3.4(d), 5.5(c), 8.4(b).

DCX-CHOL, Inc.

Respondent represented DCX-CHOL before the ASBCA after his suspensions. On July 11, 2019, the ASBCA issued an Opinion by Administrative Judge Sweet granting, in part, the U.S. Government’s pending Motion to Strike and denying the U.S. Government’s Motion to Dismiss.⁶¹ On July 15, 2019, Respondent sent this decision to Matthew Hawkins, attorney for the Government in DCX-CHOL matter.⁶² On August 2, 2019, Respondent issued a bill to DCX-CHOL reflecting work between July 18, 2019 and July 31, 2019 at \$450 per hour as a lawyer.⁶³

⁵⁵ VSB Ex.74, 89.

⁵⁶ VSB Ex.75.

⁵⁷ *Id.*

⁵⁸ VSB Ex.76.

⁵⁹ VSB Ex.77.

⁶⁰ VSB Ex.78.

⁶¹ VSB Ex.61.

⁶² VSB Ex.44.

⁶³ VSB Ex.45.

On August 12, 2019, Mr. Hawkins filed a Motion for Reconsideration of the July 11, 2019 Opinion and represented “This is a joint request filed with the consent of Appellant’s counsel.”⁶⁴

On September 10, 2019, Respondent called Mark “Hawk” Thomas, a Colorado attorney, asking if he would enter an appearance on behalf of DCX-CHOL before the ASBCA and the Court of Federal Claims.⁶⁵ The purpose was so that Mr. Thomas could “pinch-hit” for the Respondent while the Respondent went on a three-week vacation with his wife to Italy.⁶⁶ Mr. Thomas agreed to serve as co-counsel for DCX-CHOL.⁶⁷ Respondent did not disclose to Mr. Thomas that he had been suspended in D.C. and Virginia.⁶⁸

On September 11, 2019, Respondent sent an email to the ASBCA with the Opposition to Respondent’s Motion for Reconsideration on behalf of DCX-CHOL. The pleading stated it was filed “by and through undersigned counsel” and Respondent’s signature block identified Respondent’s law firm as “Argus Legal, PLLC.”⁶⁹ On September 12, 2019, Mr. Thomas sent a letter noting his appearance for DCX-CHOL in ABSCA matters.⁷⁰ On October 18, 2019, Mr. Thomas learned the VSB was investigating Respondent for continuing to practice law while suspended. Mr. Thomas credibly testified at the hearing that he was shocked by this news and called the Respondent that day. On October 21, 2019, Mr. Thomas spoke to Respondent, and Respondent admitted that he was embarrassed of the suspensions and had not notified the courts, his clients, or opposing counsel of the suspensions.⁷¹ This Board did not find the Respondent’s claim that he was “embarrassed” to be credible. Respondent cannot simultaneously be embarrassed to admit his suspensions when he his representing clients with million-dollar

⁶⁴ VSB Ex.46.

⁶⁵ See Ex. 1, 2.

⁶⁶ See *Id.*

⁶⁷ See *Id.*

⁶⁸ See *Id.*

⁶⁹ VSB Ex. 49, 50.

⁷⁰ VSB Ex. 51.

claims, but not also be embarrassed to admit his suspensions in a case like OpenText detailed above. The Respondent's motive was not embarrassment, but rather, his own financial gain.

Mr. Thomas testified that he told the Respondent if the Respondent did not notify the ASBCA, the Court of Federal Claims, opposing counsel, and his clients within one week, Mr. Thomas would notify them. Mr. Thomas also credibly testified that he was concerned about the serious situation in which the Respondent had placed him. Under false pretenses, the Respondent had induced Mr. Thomas to enter an appearance in the case, so as to receive court notices for the Respondent's clients. However, because of the Respondent's suspensions, Mr. Thomas was sole counsel for multiple clients who had not consented to his representation nor agreed to Mr. Thomas's fee arrangement. Mr. Thomas was a credible witness who detailed his work to attempt to handle the consequences of the Respondent's dishonest conduct.

The Respondent testified that, during his work for DCX-CHOL, he was operating as a paralegal. The only attorney with whom the Respondent testified that he worked as a paralegal was Perry Silver, a California Attorney with DCX-CHOL. However, the Respondent also testified that Mr. Silver was never told of the Respondent's suspensions or that the Respondent would be working for him as a paralegal. Further, the Respondent billed this work at \$450 per hour. The Board found Respondent not credible and found that his "paralegal" argument was contrived after the fact to justify his improper legal work for DCX-CHOL.

On October 22, 2019, Respondent notified DCX-CHOL of his suspensions by email.⁷² Respondent notified DCX-CHOL of his suspensions by letter dated October 24, 2019, and copied the ASBCA as well as opposing counsel.⁷³ Respondent's notifications were clearly

⁷¹ See VSB Ex. 1, 2.

⁷² VSB Ex. 55.

⁷³ VSB Ex. 56

prompted not by his duty under the *Rules*, but by Mr. Thomas' ultimatum that if the Respondent would not satisfy his ethical obligations, Mr. Thomas would do it for him.

The Board finds by clear and convincing evidence that the above conduct constitutes a violation of *Virginia Rules of Professional Conduct* 3.4(d), 5.5(c), 8.4(b).

Respondent's Conduct before the Court of Federal Claims

The United States Court of Federal Claims is a federal court with jurisdiction over citizens' claims against the federal government.⁷⁴ The Court of Federal Claims is located in Washington, D.C.⁷⁵ Rule 83.1 of the *Rules of the Court of Federal Claims* permits attorneys to practice before the Court if the attorney:

- A. is a member in good standing of the bar of the highest court of any U.S. state, territory, or possession or the District of Columbia;
- B. is a member in good standing of the bar of this court; or
- C. was a member in good standing of the bar of this court's predecessor, the United States Court of Claims.⁷⁶

The Respondent became a member of the bar of the Court of Federal Claims on May 17, 1996.⁷⁷

Pursuant to *Rule* 83.2(e) of the *Rules of the Court of Federal Claims*, Respondent was required to notify the Court of Federal Claims of his suspensions in Virginia and D.C.⁷⁸ Once the Court of Federal Claims receives notice that another jurisdiction has suspended an attorney's license, the Court may take reciprocal action.⁷⁹

Respondent continued to represent DCX-CHOL before the Court of Federal Claims after his D.C. and Virginia suspensions. On December 20, 2016, Respondent filed a Complaint for Injunctive and Declaratory Relief in the Court of Federal Claims on behalf of DCX-CHOL.⁸⁰ On

⁷⁴ VSB Ex. 14.

⁷⁵ *Id.*

⁷⁶ VSB Ex. 15.

⁷⁷ *See* VSB Ex. 1, 2.

⁷⁸ *See Id.*

⁷⁹ *See Id.*

⁸⁰ *See* VSB Ex. 40.

March 15, 2018, Respondent filed another Complaint in the Court of Federal Claims on behalf of DCX-CHOL.⁸¹ As of October 28, 2019, Respondent was still listed as an Attorney of Record in the 2018 matter on PACER.⁸² On September 17, 2019, Respondent filed an Entry of Appearance for Plaintiff on behalf of DCX-CHOL in the Court of Federal Claims which stated that Mr. Thomas was entering his appearance in order to assist Respondent as “Of Counsel.”⁸³ Respondent signed the pleading as “James S. DelSordo, Esq.”⁸⁴ On October 25, 2019, Respondent filed a Consent to Change Attorney of Record, consenting to Mr. Thomas being named the new attorney of record in the DCX-CHOL case.⁸⁵ On November 15, 2019, the Court of Federal Claims issued a Summary Suspension and Order to Show Cause regarding the Respondent.⁸⁶ The order stated that Respondent did not notify “this Court of his suspension by the [Virginia State Bar Disciplinary] Board as required by Rule 83.2 of the Rules of the United States Court of Federal Claims.”⁸⁷ Even after his suspension, on January 27, 2020, Respondent emailed Mr. Thomas regarding the DCX-CHOL matter, signing the email “James S. DelSordo, Esq.” with an attorney-client privilege warning at the bottom of the email.

The Board finds by clear and convincing evidence that the above conduct was a violation of *D.C. Rules of Professional Conduct* 3.4(c), 8.4(b), 8.4(c), and 8.4(d).

MISCONDUCT

Based upon the evidence presented, including the Certification received into evidence as Exhibit 1, the Respondent’s Response to Subcommittee Determination (Certification) received into evidence as Exhibit 2, the other Exhibits admitted into evidence, the testimony of the

⁸¹ VSB Ex. 41.

⁸² VSB Ex. 42.

⁸³ VSB Ex.52.

⁸⁴ *Id.*

⁸⁵ VSB Ex.58.

⁸⁶ VSB Ex.59.

⁸⁷ *Id.*

witnesses, and for the reasons more particularly set forth below, the Board finds, by clear and convincing evidence, that the Respondent's conduct, as set forth in the Certification, constitutes misconduct in violation of *Virginia Rules of Professional Conduct* (hereinafter *Virginia Rules*) 3.4(d); 5.5(c); 8.4(b); and *D.C. Rules of Professional Conduct* (hereinafter *D.C. Rules*) 3.3(a)(1); 3.4(c); 5.5(a); 8.4(b); 8.4(c); and 8.4(d).

Virginia Misconduct

Virginia Rule 3.4(d)

The Board finds by clear and convincing evidence that the Respondent violated *Virginia Rule of Professional Conduct 3.4(d)*. *Virginia Rule 3.4(d)* states that a lawyer "shall not . . . [k]nowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding."⁸⁸ While the Rule further permits a lawyer to test the validity of such a ruling in good faith, neither Respondent nor Respondent's counsel argued that such good faith attempt occurred here.

Respondent failed to timely notify tribunals before which he appeared, opposing counsel, and his clients of the suspension of his law license. In doing so, the Respondent knowingly disobeyed the Summary Order of this Board and its following Memorandum Order of Suspension. He did so despite receiving notice of his obligations under those Orders. Further, the Respondent filed a non-conforming Affidavit, representing that he had complied with this Board's orders when, in fact, he had not. Thus, the Board finds by clear and convincing evidence that the Respondent violated *Virginia Rule 3.4(d)*.

Virginia Rule 5.5(c)

The Board finds by clear and convincing evidence that the Respondent violated *Virginia Rule 5.5(c)*, which provides that a lawyer "shall not practice law in a jurisdiction in violation of

the regulation of the legal profession in that jurisdiction, or assist another in doing so.”⁸⁹

Respondent repeatedly held himself out as an attorney and continued to practice law in Virginia after his Virginia license was suspended on April 26, 2019.

Respondent continued to represent three different clients before the ASBCA in direct violation of the ASBCA requirement that an attorney representing an appellant be duly licensed.⁹⁰ The Board finds by clear and convincing evidence that Respondent practiced law in violation of the regulation of the legal profession in Virginia before the ASBCA and violated *Virginia Rule 5.5(c)*.

Virginia Rule 8.4(b)

The Board finds by clear and convincing evidence that the Respondent violated *Virginia Rule 8.4(b)*. Rule 8.4(b) states that “[i]t is professional misconduct for a lawyer to . . . commit a criminal or deliberately wrongful act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness to practice law.”⁹¹ It is a criminal offense to practice law without a license in the Commonwealth of Virginia.⁹² Furthermore, even if the unlicensed practice of law were not criminal, the Respondent’s actions following his suspension were deliberately wrongful, and reflect adversely on his honesty, trustworthiness, and fitness to practice law.

Respondent repeatedly represented parties as a licensed attorney in the Commonwealth of Virginia, when he was not licensed. Respondent repeatedly practiced law without a valid license to do so and violated § 54.1-390 of the 1950 Code of Virginia, as amended. Even if Respondent’s conduct was not illegal, it was deliberately wrongful. He misrepresented himself to members of the bar, his clients, and the ASBCA. These actions reflect adversely on his honesty,

⁸⁸ *Va. Rules of Prof'l Conduct Rule 3:4(d)*.

⁸⁹ *Va. Rules of Prof'l Conduct Rule 5.5(c)*.

⁹⁰ VSB Ex. 11.

⁹¹ *Va. Rules of Prof'l Conduct Rule 8.4(b)*.

trustworthiness, and fitness to practice law. By clear and convincing evidence, the Respondent violated *Virginia Rule 8.4(b)*.

D.C. Misconduct

As a threshold matter, this Board has jurisdiction to discipline the Respondent for conduct occurring in the District of Columbia, applying the *D.C. Rules of Professional Conduct*. *Virginia Rule 8.5* explicitly provides that “[a] lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of Virginia, regardless of where the lawyer’s conduct occurs.”⁹³ Furthermore, when exercising the disciplinary authority of Virginia, “for conduct in connection with a proceeding in a court, agency, or other tribunal before which a lawyer appears, the rules to be applied shall be the rules of the jurisdiction in which the court, agency, or other tribunal sits, unless the rules of the court, agency, or other tribunal provide otherwise.”⁹⁴ This choice of law provision applies to the Respondent’s conduct before tribunals located in the District of Columbia, and the *D.C. Rules* do not provide otherwise. Therefore, in exercising the disciplinary authority of Virginia, the Board applied the *D.C. Rules* to the Respondent’s conduct before tribunals located in the District of Columbia.

D.C. Rule 3.3(a)(1)

The Board finds by clear and convincing evidence that the Respondent took actions in violation of *D.C. Rule 3.3(a)(1)*. Under the *D.C. Rules of Professional Conduct*, a lawyer shall not “knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer, unless correction would require disclosure of information that is prohibited by Rule 1.6.”⁹⁵

⁹² Va. Code § 54.1-390.

⁹³ *Va. Rules of Prof'l Conduct Rule 8.5(a)*.

⁹⁴ *Va. Rules of Prof'l Conduct Rule 8.5(b)(1)*.

⁹⁵ *D.C. Rules of Prof'l Conduct Rule 3.3(a)(1)* (referencing the rule on confidentiality of information).

Respondent made numerous false representations to the Civilian Board of Contracting Appeals and Court of Federal Claims as set forth herein above. The Board finds by clear and convincing evidence, that Respondent violated *D.C. Rule 3.3(a)(1)* by knowingly making false statements of facts to the CBCA and Court of Federal Claims and failing to correct those false statements.

D.C. Rule 3.4(c)

The Board finds by clear and convincing evidence that the Respondent took actions in violation of *D.C. Rule 3.4(c)*, which states that a lawyer shall not “[k]nowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists”.⁹⁶

Respondent knew he was required to give notice of his suspension to tribunals, opposing counsel, and his clients but did not do so. Although the Respondent testified that it was due to professional embarrassment, the Board did not find his testimony to be credible and instead finds that the Respondent was motivated by the opportunity for significant financial gain. Respondent knowingly disobeyed his obligations under the rules of the Court of Federal Claims and the D.C. Court of Appeals. He did not do so openly, and he knew a valid obligation existed. Thus, this Board finds by clear and convincing evidence, that the Respondent violated *D.C. Rule 3.4(d)*.

D.C. Rule 5.5(a)

The Board finds by clear and convincing evidence that the Respondent took actions in violation of *D.C. Rule 5.5(a)*. Under *D.C. Rule 5.5(a)*, a lawyer shall not “[p]ractice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.”⁹⁷

⁹⁶ *D.C. Rules of Prof'l Conduct Rule 3.4(c)*.

⁹⁷ *D.C. Rules of Prof'l Conduct Rule 5.5(a)*.

As discussed above, Respondent repeatedly continued to practice law in the District of Columbia, in direct violation of his suspension and without a license. Therefore, this Board finds that the Respondent violated *D.C. Rule 5.5(a)*.

D.C. Rule 8.4(b)

The Board finds by clear and convincing evidence that the Respondent took actions in violation of *D.C. Rule 8.4(b)*. *D.C. Rule 8.4(b)* states that “[i]t is professional misconduct for a lawyer to: [c]ommit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.”⁹⁸ As set forth above, Respondent repeatedly engaged in the unauthorized practice of law in violation of the D.C. Court of Appeals Rule 49(a) following his suspension in D.C. Even while Respondent was actively representing clients in the CBCA and Court of Federal Claims, he represented the opposite to the D.C. Court of Appeals. Respondent’s misrepresentations under penalty of perjury and his unauthorized practice of law are criminal acts that reflect adversely on the Respondent’s honesty, trustworthiness, and, fitness as a lawyer. Thus, the Board finds that Respondent violated *D.C. Rule 8.4(b)* by clear and convincing evidence.

D.C. Rule 8.4(c)

The Board finds by clear and convincing evidence that the Respondent took actions in violation of *D.C. Rule 8.4(c)*. Under *D.C. Rule 8.4(c)* it is professional misconduct to “[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”⁹⁹

The conduct outlined herein above is clear evidence of Respondent engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation. As set forth herein above, Respondent made serious misrepresentations to the CBCA, the Court of Federal Claims and Mr. Thomas. His

⁹⁸ *D.C. Rules of Prof'l Conduct Rule 8.4(b)*.

⁹⁹ *D.C. Rules of Prof'l Conduct Rule 8.4(c)*.

conduct deceived his fellow attorneys, clients, and the tribunals before which he was practicing. By clear and convincing evidence, Respondent violated D.C. *Rule 8.4(c)*.

D.C. Rule 8.4(d)

The Board finds by clear and convincing evidence that the Respondent took actions in violation of *D.C. Rule 8.4(d)*. Pursuant to *D.C. Rule 8.4(c)* it is professional misconduct to “[e]ngage in conduct that seriously interferes with the administration of justice.”¹⁰⁰

Respondent’s actions interfered with the CBCA’s ability to administer justice and delayed NVS’s ability to access the judicial system. These actions harmed his own clients and the court’s ability to function properly. By clear and convincing evidence, the Board finds Respondent violated *D.C. Rule 8.4(d)*.

After recess for deliberation the Chair communicated that, after due deliberation, the Board unanimously found by clear and convincing evidence the Respondent’s violations in this case of *Virginia Rules 3.4(d)*, *5.5(c)*, and *8.4(b)* and *D.C. Rules 3.3(a)(1)*, *3.4(c)*, *5.5(a)*, *8.4(b)*, *8.4(c)*, and *8.4(d)*. The Board then reconvened for the sanctions phase of the hearing, as addressed herein.

SANCTIONS PHASE OF HEARING

After the Board announced its findings by clear and convincing evidence that Respondent had committed the violations charged in the Certification, it provided the Respondent and the VSB the opportunity to provide additional evidence regarding aggravating and mitigating factors applicable to the appropriate sanction to be imposed. VSB Exhibits 90-93 were admitted without objection from the Respondent. The argument presented by the VSB during the sanctions phase addressed the Respondent’s prior disciplinary record and his pattern of behavior. Respondent’s counsel focused on the Respondent’s effort to comply with the Board’s disciplinary proceedings.

Respondent has an extensive prior disciplinary record, consisting of (1) a Private Reprimand with Terms dated October 26, 2004, (2) a Public Admonition with Terms dated November 6, 2012, and (3) a Suspension for One Year and One Day dated April 26, 2019.

On October 26, 2004, Respondent received a Private Reprimand with Terms for failing to properly maintain his law firm trust account in accordance with Rule 1.15 of the *Virginia Rules of Professional Conduct*.¹⁰¹ The Fifth District Section II Subcommittee found that he failed to record checks and properly reconcile the account.¹⁰² The terms imposed by the Subcommittee were to purchase and read a copy of *Lawyers and Other People's Money*, and to complete an additional six (6) hours of Continuing Legal Education in Ethics.¹⁰³ On December 9, 2004, the Office of Bar Counsel notified the Respondent that he had complied with terms.¹⁰⁴

On October 23, 2012, Respondent received a Public Admonition with Terms for again failing to properly maintain his law firm trust account in accordance with Rule 1.15 of the *Virginia Rules of Professional Conduct*. By agreed disposition, the Board found that he failed to record checks and properly reconcile the account.¹⁰⁵ The terms imposed included again reading *Lawyers and Other People's Money* and hiring a law office management consultant to review the Respondent's law firm practice policies.¹⁰⁶ On October 22, 2013 the Office of Bar Counsel notified the Respondent that he had complied with terms.¹⁰⁷

Finally, on April 26, 2019, Respondent was suspended for one year and one day. Again, this discipline occurred because of the Respondent's failure to maintain his law firm trust account. However, in an apparent escalation from Respondent's previous misconduct, the Board

¹⁰⁰ *D.C. Rules of Prof'l Conduct Rule 8.4(c)*.

¹⁰¹ VSB Ex. 91.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

found Respondent had repeatedly paid his own personal expenses from his client trust account, including charges for personal travel, his children's educational expenses, miscellaneous personal expenses, and a check for \$51,795.08 to purchase an Acura MDX for the Respondent's wife.¹⁰⁸ The Board found that Respondent had violated various sections of *Rules* 1.15 and 8.4. As a result, the Board suspended Respondent's law license for one year and one day.

Respondent's Counsel asserted that the Board's finding should be mitigated by the Respondent's compliance with producing correspondence and cooperating with the Board and the VSB's investigators.

DISPOSITION

At the conclusion of the evidence in the sanctions phase of this proceeding, the Board recessed to deliberate. After due deliberation and review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB, upon review of the exhibits presented by Respondent's counsel, upon the testimony from the witnesses presented on behalf of the VSB, upon Respondent's testimony and argument of Respondent's counsel and Bar Counsel, the Board reconvened and stated its finding that, when considered together, Respondent's pattern of misconduct demonstrates a serious failure to uphold his duties to the profession.

The Board's finding is mitigated only by the Respondent's cooperation with VSB in its investigation and the disclosure of documents. However, any mitigation is far outweighed by numerous aggravating factors present in this case. The Respondent has been an attorney for approximately thirty (30) years. Respondent has a series of prior disciplinary offenses, for which his previous punishments have not been sufficient to prompt a change in the

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Respondent's behavior. Respondent's motive in this case appears to be selfish, as he failed to notify clients, opposing counsel, and tribunals of his suspension and continued to send clients bills for work as an attorney. This most recent offense is part of a pattern of misconduct and deceit evidenced by Respondent's disciplinary record and his conduct since his suspension. Respondent failed to comply with the prior orders of this Board regarding the notice requirement for his suspension, and the Respondent's repeated misrepresentations and unauthorized practice of law are criminal offenses that reflect poorly on the Respondent's honesty, trustworthiness and fitness to practice law. Finally, the Board did not find Respondent's testimony to be at all credible.

During its deliberation and in determining the appropriate sanction to impose, the Board considered the mitigating and aggravating factors set forth herein above as well as the American Bar Association's Standards for Imposing Lawyer Sanctions.¹⁰⁹ According to the ABA Standards, "disbarment is generally appropriate when a lawyer, with the intent to deceive the court, makes a false statement, submits a false document, or improperly withholds material information, and causes serious or potentially serious injury to a party, or causes a significant or potentially significant adverse effect on the legal proceeding."¹¹⁰ In these matters, the Board was particularly troubled by the Respondent's pattern of dishonesty with tribunals, opposing counsel, and his own clients. Particularly concerning was that Respondent represented himself as a licensed attorney to Mr. Thomas, inducing Mr. Thomas to put himself at serious professional risk and assume a case for which he only intended to temporarily cover. This was just one example of the pattern of dishonesty demonstrated by the Respondent, intentionally

¹⁰⁹ ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS (2015).

¹¹⁰ ABA ANNOTATED STANDARDS FOR IMPOSING LAWYER SANCTIONS, at 289 (2015).

deceiving courts, his opposing counsel, and his own clients. Respondent's misconduct demonstrates a serious failure to uphold his duties to the legal profession.

Upon consideration of the evidence and the nature of the misconduct committed by Respondent, it is ORDERED, by unanimous vote of the Board, that Respondent's license to practice law in the Commonwealth of Virginia be revoked, effective January 22, 2021.

It is further ORDERED that Respondent must comply with the requirements of Part 6, Section § IV, ¶ 13-29 of the *Rules of Supreme Court of Virginia*. Respondent shall forthwith give notice, by certified mail, of the revocation of his license to practice law in the Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his clients. Respondent shall give such notice within fourteen (14) days of the effective date of the revocation and make such arrangements as are required herein within forty-five (45) days of the effective date of the revocation. Respondent shall also furnish proof to the Bar within sixty (60) days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if Respondent is not handling any client matters on the effective date of revocation, he shall submit an affidavit to that effect to the Clerk of the Disciplinary System at the Virginia State Bar within sixty (60) days of the effective day of the revocation. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose additional sanctions for failure to comply with the requirements of this subparagraph.

It is further ORDERED that pursuant to Part 6, Section, § IV, ¶ 13-9(E) of the *Rules of Supreme Court of Virginia*, the Clerk of the Disciplinary System shall assess all costs against Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his address of record with the Virginia State Bar by certified mail, return receipt requested, and by regular and electronic mail, and a copy by electronic mail to Timothy Battle, Esquire, counsel for the Respondent and Elizabeth Schoenfeld, Senior Assistant Bar Counsel.

ENTERED this 12th day of February, 2021.

VIRGINIA STATE BAR DISCIPLINARY BOARD



Thomas R. Scott, Jr., 2nd Vice Chair